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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 PAMELA CHYBA,

11 Plaintiff,

12 vs.

13 BAYVIEW LOAN SERVICING,
14 LLC, AKA BAYVIEW, DAVID
ERTEL, AND MARILYN CORO,

15 Defendants.

CASE NO. 14-CV-1415-BEN (BLM)

**ORDER GRANTING MOTION
FOR LEAVE TO FILE AMENDED
COMPLAINT**

[Docket No. 18]

16 Before this Court is a Motion for Leave to File Amended Complaint, filed by
17 Plaintiff Pamela Chyba. (Docket No. 18). On October 6, 2014, Defendants Bayview,
18 David Ertel, and Marilyn Coro filed a Response in Opposition. (Docket No. 19). For
19 the reasons stated below, the Motion for Leave is **GRANTED**.

20 Plaintiff commenced a lawsuit against Defendants by filing a Complaint alleging
21 violations of the Fair Debt Collections Practices Act, the Fair Credit Collection
22 Practices Act, the Telephone Collection Practices Act, and the California Rosenthal Act
23 on June 10, 2014. (Docket No. 1). On July 2, 2014, Defendants filed a Motion to
24 Dismiss for Failure to State a Claim, or in the alternative, a Motion for a More
25 Definitive Statement (Docket No. 7), and a Motion to Strike Portions of Complaint.
26 (Docket No. 8). On August 25, 2014, Plaintiff filed a Response in Opposition to
27 Defendants' Motions. (Docket No. 12).

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1 Except as provided by Federal Rule of Civil Procedure 15(a)(1), a party may
2 amend its pleading only with the opposing party's consent or the court's leave. Fed.
3 R. Civ. P. 15(a)(2). Pursuant to Federal Rule of Civil Procedure 15(a)(2), leave to
4 amend should be "freely given when justice so requires," and the Supreme Court has
5 stated that "this mandate is to be heeded." *Forman v. Davis*, 371 U.S. 178, 182 (1962).
6 Where the underlying facts or circumstances relied upon by a plaintiff may be a proper
7 subject of relief, he ought to be afforded an opportunity to test his claim on the merits.
8 *Id.* Leave should be freely given in the absence of any apparent or declared reason,
9 "such as undue delay, bad faith or dilatory motive on the part of the movant, . . . undue
10 prejudice to the opposing party. . . , futility of amendment, etc." *Id.*

11 Plaintiff requests leave to file an amended complaint in order to clarify certain
12 causes of action and remove a Defendant. (Mot. at 3). Defendants argue that
13 Plaintiff's amended complaint is futile, moot, and premature because this issue is
14 already under submission with the Court. (Opp'n at 1-2). This Court disagrees and
15 finds leave to amend is appropriate in this instance.

16 The Court finds no evidence of undue delay, bad faith, or undue prejudice.
17 Plaintiff filed the instant Motion only ten days after filing her Response to Defendants'
18 Motions. Additionally, Defendants are not prejudiced by allowing leave for an
19 amended complaint. In light of Defendants' previously filed Motion for Definitive
20 Statement, Defendants essentially ask Plaintiff for an amended complaint, which is
21 exactly what Plaintiff requests here. Further, the only factor that Defendants dispute
22 is futility.

23 Plaintiff argues that her amended complaint will clarify the "direct association"
24 between Defendant Marilyn Coro and Plaintiff. (Mot. at 2). Plaintiff also intends to
25 remove David Ertel as a Defendant from this case. (*Id.*) Finally, Plaintiff asserts that
26 she will clarify or remove remaining causes of action. (*Id.*)

27 Defendants argue that Plaintiff's Motion "should be denied as futile" because it
28 is "premature and will likely be moot," particularly because this issue of filing an

1 amended complaint is already under submission with the Court. (Opp'n at 2). Plaintiff
2 and Defendants both point out that Plaintiff stated in her Response in Opposition to
3 Defendants' Motions, that Plaintiff would file an amended complaint. In fact, Plaintiff
4 briefly states that she "will be filing a first amended complaint." (Docket No. 12, Resp.
5 in Op. to Def.'s Mots. ¶ 73). The Court does not construe Plaintiff's statement as a
6 request for leave from the Court. This conclusion is supported by the fact that Plaintiff
7 filed the instant Motion, a *request* for leave, two weeks later. Plaintiff's Motion is not
8 premature, and certainly not moot. This Court is therefore persuaded that the proposed
9 amended complaint is not futile.

10 Upon review of the record, Plaintiff's Motion for Leave to File Amended
11 Complaint is **GRANTED**.

12 It is **ORDERED** that Plaintiff file an amended complaint within two days of the
13 date that this Order is filed. It is further **ORDERED** that Plaintiff file an unredacted
14 version of the exhibits attached to her amended complaint for case participants only.

15 **IT IS SO ORDERED.**

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17 Dated: October 24, 2014

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19 HON. ROGER T. BENITEZ
20 United States District Judge
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